

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HERBERT STUDSTILL EL,

Plaintiff,

v.

CITY OF TAYLOR,

Defendant.

Case No. 15-cv-12336

UNITED STATES DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

UNITED STATES MAGISTRATE JUDGE
DAVID R. GRAND

**ORDER DENYING APPLICATION TO PROCEED
IN FORMA PAUPERIS ON APPEAL [#20]**

Presently before the Court is Plaintiff Herbert Studstill El's Application to Proceed Without Prepaying Fees or Costs on Appeal, filed December 8, 2015. Dkt. No. 20. This Court's November 16, 2015 Opinion and Order concluded that Plaintiff failed to state a claim upon which relief may be granted. Dkt. No. 17. Plaintiff filed a Notice of Appeal on December 8, 2015. Dkt. No. 19.

Federal Rule of Appellate Procedure 24(a)(3) states:

(3) *Prior Approval.* A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken good faith or finds that the party is

not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

Fed. R. App. P. 24(a)(3). “Good faith” requires a showing that the issues are arguable on the merits and are, therefore, not frivolous; it does not require a showing of probable success. *See Harkins v. Roberts*, 935 F. Supp. 871, 873 (S.D. Miss. 1996). “If the district court can discern the existence of any nonfrivolous issue on appeal, the movant’s petition must be granted.” *Id.* “Although the term ‘frivolous’ is not subject to a ready made definition, generally ‘[a]n appeal is frivolous when the result is obvious or when the appellant’s argument is wholly without merit.’ ” *Dubay v. Wells*, 506 F.3d 422, 432-33 (6th Cir. 2007) (quoting *Pieper v. Am. Arbitration Assoc.*, 336 F.3d 458, 465 (6th Cir. 2003)).

Here, the Court concludes that the appeal is not taken in good faith. Plaintiff failed to raise any arguments in support of his appeal. This Court thoroughly reviewed Plaintiff’s case and determined that all of Plaintiff’s claims are subject to dismissal under Rule 12(b)(6). Plaintiff has not identified any errors with respect to this Court’s conclusion that Plaintiff cannot bring a claim under the Moorish Zodiac Constitution, which is not within the limited jurisdiction of the federal courts of the United States. Nor does Plaintiff explain what facts the Court missed in determining that Plaintiff failed to put forth any facts in his pleadings to support claims under the First, Fourth, Fifth, and Ninth Amendments. Lastly, Plaintiff did

not explain why the Court erroneously concluded that his constitutional claims fail to meet the requirements of Rule 12(b)(6).

Accordingly, for the foregoing reasons, the Court concludes that Plaintiff's appeal is not taken in good faith and his Application to Proceed *In Forma Pauperis* [#20] is DENIED

IT IS SO ORDERED.

Dated: February 3, 2016

/s/ Gershwin A. Drain
HON. GERSHWIN A. DRAIN
United States District Court Judge

CERTIFICATE OF SERVICE

Copies of this Order were served on February 3, 2016 upon attorneys of record and Herbert Studstill-El at 6296 Carnegie St., Romulus, MI 48174 by electronic and/or ordinary mail.

/s/ Tanya Bankston
Case Manager